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ABSTRACT

The issue of search and seizure in the public schools is clouded by conflicting legal decisions. School policies and rules on the issue should be made only after considerable deliberation and community input. Because of the lack of clarity, this model of search and seizure policy and rules is intended only as a basis for consideration of the topic. In making search and seizure policies, a balance must be maintained between an individual student's rights and the school's responsibility to maintain an environment conducive to learning. The basis for protection from unreasonable searches and seizures is the Fourth Amendment to the Constitution. The importance of the school's responsibility for maintaining an environment conducive to learning is evident in recent Supreme Court decisions involving short-term suspension of students and corporal punishment. The search and seizure policy suggested here is a short general statement of district direction concerning the policy. Numerous rules are suggested that apply the policy to specific circumstances. This model attempts to distinguish among three types of searches: maintenance inspection of lockers; contraband search of lockers; and contraband search of students and their immediate possessions.

(Author/JM)

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Search & Seizure In The Schools

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November 1976

MODEL POLICY AND RULES, WITH COMMENTS,
FOR ASSISTANCE TO LOCAL BOARDS IN
SEARCH & SEIZURE IN THE SCHOOLS

IMPORTANT: THIS IS A MODEL ONLY

This model contains numerous ethical, educational and legal judgments. Do not accept any portion of this model as local policy or rules until after full and sufficient consideration. It is always wise to have proposed local policies and regulations reviewed by legal counsel.

Des Moines, Iowa
November, 1976

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Search & Seizure in the Schools

Introduction: Please Read Carefully.

No court with jurisdiction in Iowa has addressed the issue of search and seizure in the public schools. The entire area of search and seizure in the public schools is clouded both in the legal and educational sense, and decisions should be made regarding school policies and rules on the issue only after considerable deliberation and educational community input. Because of this lack of clarity, this publication has been undertaken to assist educators and others as a basis for consideration of the topic. Because unfortunate and confusing factual situations in litigation often result in legal decisions which have negative consequences reaching far beyond the actual persons involved, it is a purpose of this publication to aid in the establishment of school policy and rules which will more likely result in favorable factual circumstances, if tested by litigation.

This Department is cognizant of the attempt to assure a balance between individual student's rights and the public school's responsibility of maintaining an environment which is conducive to learning as reflected in recent United States Supreme Court decisions involving short-term suspensions of students and the administration of corporal punishment. This concept of balance is legally and educationally sound and this model attempts to create a balance between the rights of individual students and the duties and responsibilities of school officials.

The basis for protection from certain kinds of searches and seizures is found in the Fourth Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, . . .
[emphasis added]

Nearly all of the reported court decisions dealing with the application of the Fourth Amendment to the educational setting have dealt with the introduction of evidence, allegedly obtained in violation of the Fourth Amendment, at a criminal trial or determination of juvenile delinquency proceeding. Only very few reported cases have dealt with the use of such evidence at administrative hearings. Reported cases dealing with personal liability of school officials for alleged violations of the Fourth Amendment are rare. However, with recent developments in the law, as discussed briefly below, and an apparently increasing need on the part of educators to participate in searches of student and lockers, the problem needs to be investigated much more carefully than in the past. (See Selected Source Reference)

At least one state supreme court, Louisiana, has recently ruled that school officials are to be held strictly to the same Fourth Amendment restrictions as other governmental officials, such as police, when conducting searches of students and lockers. Also, relatively recently, the federal courts have upheld the liability of law enforcement officers who have outrageously breached the

Fourth Amendment prohibitions, and two federal district courts have determined that such liability may be applied to school officials who have participated in police-instituted strip searches of students.

However, the vast majority of state courts that have decided the issue, including recent decisions in New Mexico and Georgia, have upheld searches by school officials which have been determined to be based in reasonableness and which have been conducted for an educationally valid purpose. State courts have consistently refused to uphold the validity of searches conducted by school officials without valid reason, e.g. upon suspicion only. The test of reasonableness appears to be that of an ordinary reasonable person in the same set of circumstances, i.e. would a reasonable person, given the same set of circumstances, believe that a search was in order. For instance, searches resulting from information from students as to possession of contraband have generally been upheld as reasonable; but, when a bulge in a pocket is the only basis for a search, it has generally been held unreasonable. State courts have also been consistent in refusing to uphold the validity of such searches when the purpose or intent of the search was in the nature of law enforcement. Thus, searches intended to cleanse the educational environment of narcotics have been held to have the proper intent and searches in aiding a police investigation without a warrant have not.

It must always be remembered that this model is designed to serve only as a basis for local school district consideration. It contains numerous legal, educational and ethical judgments.

Model Policy and Rules for Search and Seizure in the Educational Environment

It is of the utmost importance that a delineation be made between "policy" and "rules." Policy is that general statement of direction given by the board of directors to all concerned. Rule is that procedure developed by the school administration (and under Iowa law, adopted by the Board) by which the policy is to be carried out. Rules detail the application of policy to specific circumstances. Proposed policies and rules should always be reviewed by legal counsel.

This model attempts to distinguish between three types of searches: (1) maintenance inspection of lockers; (2) contraband search of lockers; and (3) contraband search of students and their immediate possessions. If you have any comment regarding this model, please communicate it to the Committee members.

It is suggested that policies and rules, affecting the entire educational community such as this one does, be developed with input from all segments of the educational community, including parents and students.

Model Statement of Policy

It shall be the policy of the _____ School District to provide appropriate desks and lockers for temporary use by students. Desks and lockers provided for temporary use of students remain at all times the property of the school District, are subject to the rules of the District, to periodic inspection for cleanliness, missing school property and evidence of vandalism and special searches of contraband materials. The persons of students shall be free from unreasonable searches and seizures.

Legal Reference: Code of Iowa §274.1
§279.8

Model Statement of Rules

I. Lockers and Desks

- A. Students will be assigned lockers or desks by homeroom teachers at the direction of the principal or other person in charge of the attendance center. Students must continue to use the desk or locker assigned until approval to use another is secured from the homeroom teacher.

Comment: The use of the homeroom teacher is but one of numerous ways in which assignment of desks and lockers may be carried out.

- B. School desks and lockers are not places of storage for items of a private or personal nature. Students are to use desks and lockers only for the storage of school books, school materials and possessions ordinarily used in day-to-day school activities and outerwear clothing.

C. Locks

1. Upon request, students will be issued locks for lockers from the office at no charge. If the lock is lost or for any reason not returned at the request of the principal or other person in charge of the attendance center, the student will be charged the cost of the lock.

Comment: This may be accomplished by collecting a deposit for the lock which would be returned to the student upon return of the lock. If the lock is "rented" to the student, the argument may be made that as tenant of the locker the student has a right to privacy which overrides the ownership interests of the school district and thus, a search of the "rented" locker may be a violation of the student's rights. Judging by the current trend in the law, it is not likely that a court would accept the argument; however, it does remain a good argument.

2. No locks may be placed in students' desks or lockers except those issued or authorized by the school principal or other person in charge of the attendance center. Unauthorized locks may be removed or cut off at the principal's discretion.

D. Rule Information

1. Upon receiving a desk or locker assignment, each student will receive a copy of a statement briefly explaining school rules and policy relevant to desks and locker assignments.

Comment: See form following rules.

2. Homeroom teachers shall be instructed to discuss school locker and desk policy and rules with homeroom students at the time of assignment to further give notice of school policy and rules.

E. Inspection of desks and lockers

1. Maintenance Inspections

- a. The lockers and desks remain at all times the property of the school district, even though temporarily assigned to students, and are subject to periodic inspections for cleanliness, missing school property and evidence of vandalism. Damages may be assessed to the students occupying a desk or locker equally or individually for damage to the locker or desk, after an investigation by the homeroom teacher or a building administrator, which gives the students involved an opportunity to explain their side of the situation.

Comment: Rules regarding vandalism of school property and whether such items as tape and decals may be used in school lockers should be considered elsewhere in school rules.

- b. Any items of contraband, as defined in these rules, found during such a search will be turned over to the principal or other person in charge of the attendance center. The school administration will take no action, disciplinary in nature, but will try to correct the problem through education, counseling, parental involvement, medical referral or other suitable referral. Items which may be considered to be illegal to possess may be turned over to the proper authorities.

Comment: Some persons may not approve of the prohibition against taking disciplinary action as a result of findings of maintenance searches. Because a maintenance search may occur in the absence of "reasonable cause," and thus be subject to constitutional

scrutiny, items found during such a search could not likely be used as evidence at a criminal trial or delinquency hearing, and the use for administrative determinations such as suspension and expulsion are suspect. While the courts in some states may uphold the use of such evidence, the safest approach from a legal standpoint at the current time is to not use the discovered items in an administrative hearing. The prohibition against using items found during a maintenance inspection as evidence will also serve as a protection against potential harassment by school employees.

Under this rule, contraband must be turned over to the administration, but the administration may use discretion in turning illegal contraband over to the police. The primary reason for the use of this discretion is to allow the administration the opportunity to take calculated legal risks upon themselves when they determine that the best interest of the student outweighs such risks. The administrator who does not turn items over to the law enforcement authorities may be subjected to criminal charges. (See Comment under Section III.) Prior arrangements with local law enforcement officials, such as the county attorney, for disposition of illegal items are desirable. The relationship, however, must not become one where the school official takes on the role of police informant or agent.

2. Contraband Search of Desks and Lockers

- a. In the interest of maintaining the health and safety of the school environment, all desks and lockers are subject to inspection and search by school authorities for the location and discovery of items of contraband. Items of contraband generally cause material and substantial disruption of the school environment or present a threat to the health and safety of the students, employees and visitors on school premises. Items of contraband include, nonprescription controlled substances, such as marijuana, cocaine, amphetamines and barbiturates, apparatus used for the administration of controlled substances, alcoholic beverages, tobacco, weapons, explosives, poisons and stolen property. Such items are not to be placed in desks and lockers under any circumstances. Students who place such items in lockers and desks are subject to school discipline including the possibility of suspension from school for the remainder of the school year.

Comment: Specific discipline measures available, and the rules against contraband items should also be appropriately placed elsewhere in school policy and rules defining student misconduct. Many persons may feel that tobacco is an "evil" of a lesser degree than the other items enumerated and may want to exclude it from the contraband list. In Iowa, school districts must make rules prohibiting the use of tobacco, but there is no similar requirement regarding possession of tobacco. The authority for rules on possession of tobacco could likely be found under the general rule-making powers of a school district.

- b. In order to protect and promote the educational environment, an administrator or teacher, having reason to believe that a desk or locker contains items of contraband, may conduct a search of the desk or locker. The degree of reason needed shall be that which a reasonable person would have under the same circumstances and which results from omissions or acts on the part of the individuals or information obtained from reliable persons.
- c. If time permits, the school administrative staff member may contact the proper law enforcement official in an attempt to obtain a search warrant. Obtaining a search warrant is most appropriate if time is not of the essence, such as during a weekend, and the likelihood of someone having access to the desk or locker is remote. A school staff member may be assigned to prevent access to a desk or locker while an attempt is being made to obtain a search warrant.

Comment: It may be appropriate to establish procedures with law enforcement officials for obtaining search warrants. Generally, however, in order to obtain a search warrant, the requesting law enforcement officials must show probable cause which is more difficult than a showing of reasonable cause.

- 3. Searches of student desks or lockers for suspected contraband by school staff members shall be conducted in the following manner:
 - a. When time permits, searches for contraband should be made by a member of the school administrative staff.
 - b. When time permits, searches should be conducted in the presence of another certificated school employee.
 - c. Teachers having reason to believe that a student's desk or locker may contain contraband may search the student's desk or locker if the teacher has reason to believe that the suspected contraband may be subject to imminent removal. However, when time permits, the teacher shall contact a building administrator prior to the search and may station a school staff member near the desk or locker to prevent access in the teacher's absence.
 - d. When time permits, a reasonable effort should be made to obtain the consent of the student or students assigned to a desk or locker prior to the search.
 - (1) The student(s) should be told generally the reason for the search and the basis for believing that contraband may be present in the desk or locker.

- (2) The student should be informed of possible disciplinary action resulting from a finding of contraband in the desk or locker, and that any contraband found may be turned over to law enforcement authorities.
- (3) The student should be allowed to refute or explain the circumstances which established reasonable belief in the school official.

Comment: While "informed consent" is not currently a legal requirement, it is educationally and ethically appropriate. Problems may arise if the student, because of age, maturity or handicap is unable to understand the importance of what is taking place. In such situations, it may be appropriate to first contact the student's parents.

If informed consent is obtained, without duress, the students or parents will likely have effectively waived their rights under the Fourth Amendment.

- e. If the student, because of handicap or maturity level, is unable to understand the importance of what is taking place, the parents or guardians shall be notified. In such cases, the provisions of Section I. 3. d. shall then be carried out with the knowledge or presence of the parents or guardians.
- f. The search may proceed with or without the student's consent as long as the person conducting the search continues to have reason to believe that contraband may be present in the desk or locker.

Comment: If the student has furnished an explanation that negates the reasonable cause element in the mind of the person conducting the search, the student's dignity and limited privacy do not need to be violated by an unwarranted search.

- g. Immediately prior or subsequent to a search for contraband, the school staff member involved shall document in writing the reasons for believing that contraband may have been present. This procedure is to be carried out regardless of whether contraband is actually found.
- h. If contraband is found, appropriate disciplinary action may be taken. Items which may be illegal to possess may be turned over to the proper authorities.

Comment: See second paragraph of second Comment under Section I. E. 1. and Section III and the Comment thereunder.

II. Contraband Search of Student's Person and Immediate Possessions

- A. In the interest of maintaining the health and safety of the school environment, students, while in school, on school property, attending school functions or representing the school, shall not have on their persons or in their possession items of contraband. Items of contraband generally cause material and substantial disruption of the school environment or present a threat to the health and safety of the students, employees and visitors on school premises. Items of contraband include nonprescription controlled substances, such as marijuana, cocaine, amphetamines and barbiturates, apparatus used for the administration of controlled substances, alcoholic beverages, tobacco, weapons, explosives, poisons and stolen property. Students who carry or possess such items of contraband while in school, on school property, attending a school function or while representing the school are subject to school disciplinary action including the possibility of suspension from school for the remainder of the school year.

Comment: Additional rules against possession of contraband items which spell out disciplinary measures to be applied should be appropriately placed elsewhere in school rules defining student misconduct. See tobacco comment under Section I. E. 2.

- B. Members of the school district's administrative staff may search the person, clothing and immediate possessions of students when they have reason to believe that the student is in possession of items of contraband.

Except in an emergency situation or when administrative staff members are not available, other school district staff members should not search the person or immediate possessions of a student except in the presence of an administrative staff member.

- C. Searches of students and their immediate possessions shall be conducted in the following manner:
1. The administrator conducting the search must have reason to believe that the student has items of contraband on his person or in his immediate possession. The degree of reason needed shall be that which a reasonable person would have under the same circumstances and which results from omissions or acts on the part of individuals or information obtained from reliable persons.
 2. When time permits, searches should be conducted in the presence of another certificated school employee.
 3. When time permits, the consent of the student should be solicited prior to the search.
 - a. The student should be told generally the reason for the search and the basis for believing that the student possesses contraband.

- b. The student should be informed of possible disciplinary action resulting from the finding of contraband on the person of the student or in the student's possession, and that any contraband found may be turned over to law enforcement officials.
- c. The student should be given the opportunity to explain his or her side of the story relating to the establishment of reasonable belief.
- 4. If the student, because of handicap or maturity level, is unable to understand the importance of what is taking place, the parents or guardians shall be notified. The provisions of Section II. C. 3. shall be carried out with the knowledge or in the presence of the parents or guardians.

Comment: See earlier Comment on "informed consent," under I. E. 3. d.

- 5. The search may proceed with or without the student's consent as long as the person conducting the search continues to have reason to believe that contraband may be found upon the student's person or in the student's possession.
- 6. Every reasonable effort shall be made to have the student voluntarily produce contraband material allegedly concealed. Except when suspected contraband believed to be present on the person of a student or in a student's immediate possession is an immediate threat to the health and safety of the student or other persons, the use of force should not be used when a student forcefully resists search efforts. In such an event where the student forcefully resists or appears ready to forcefully resist such searches, the person searching shall allow the student to leave, or shall follow the proper school procedure for attempting to obtain a search warrant.
- 7. The extent of the search of the person or immediate possession of a student shall be governed by the circumstances and common sense shall prevail. No strip search or body cavity search will be conducted without a proper search warrant obtained through proper school procedure.

Comment: Common sense would generally dictate that body searches should not usually be conducted by a person of the opposite sex.

- 8. Immediately prior or subsequent to a search for contraband, the school staff members involved shall document in writing the reasons for believing that contraband may have been present. This procedure is to be carried out regardless of whether contraband is actually found.
- 9. If contraband is found, appropriate disciplinary action may be taken. Items which may be illegal to possess may be turned over to the proper authorities.

Comment: See second paragraph of Comment under Section I. E. 1. and Section III and the Comment thereunder.

III. Handling of Contraband Items

While criminal prosecution is never an objective of the school district or its staff, items of contraband may be turned over to legal authorities for whatever action the legal authorities deem appropriate.

Comment: Criminal prosecution should never be the intent of the educator conducting a search in school. However, several legal principles should be considered whenever items of a more serious nature, such as narcotics, are discovered. Failure to turn over evidence of clear violations of criminal law to authorities may cause the school official to be subject to charges of being in possession of the illegal items or even an accessory to the crime. See second paragraph of the second Comment under Section I. E. 1.

IV. Assisting Law Enforcement Officers

Except in emergency situations, school employees shall not assist law enforcement officers in searches of student desks, lockers, persons or immediate possessions without a direct clear command or written court order to do so.

Comment: When school officials directly aid police, they may be acting as law enforcement officials and not educators, and that is probably how a reviewing court will perceive the situation. On the other hand, failure to obey police or court orders can bring severe penalties to the school official. The best course of action is to obey commands and let the legal questions fall in the laps of the ordering police or court. A bomb threat would be an example of an emergency situation.

V. Items Which May Disrupt the Educational Environment

Items which are not contraband, but which may reasonably be assumed to be used to disrupt or interfere with the educational environment, may be seized temporarily by school officials. Such items shall, upon request, be returned to the student or parent at the end of a school day.

Comment: Obvious examples would be air horns, fresh eggs, and squirt guns.

VI. Receipts

Students shall be given receipts for items impounded by school officials and parents may be notified in writing of any items impounded. All legal items impounded shall be made available to the student or parent at the end of a school day, upon request.

VII. Search of Automobiles

- A. Unless a clear state of impending emergency or danger exists, the procedures of the school district for obtaining a search warrant will be followed and law enforcement authorities will be contacted.
- B. When a clear state of impending emergency or danger exists, a school administrator may search automobiles and other vehicles which are parked on school grounds, while students are present on school grounds for school activities, if easy access is available and if the administrator has reason to believe that contraband items are likely to be found therein. The degree of reason needed shall be that which a reasonable person would have under the same circumstances and which results from omissions or acts on the part of individuals or information obtained from a reliable source. Immediately prior or subsequent to a search for contraband, the school staff members involved shall document in writing the reasons for believing that contraband may have been present, regardless of whether contraband was actually discovered.
 1. When time permits, such searches shall be in the presence of the owner or possessor of the vehicle and another certificated staff member.
 2. When time permits, a reasonable effort should be made to obtain the consent of the owner or possessor of the vehicle to search the vehicle, prior to the search.
 - a. The owner or possessor should be told generally the reason for the search and the basis for believing that contraband is contained in the vehicle.
 - b. The owner or possessor should be informed of possible disciplinary action resulting from the finding of contraband in a vehicle and that any contraband found may be turned over to law enforcement officials.
 - c. The owner or possessor should be given the opportunity to explain his or her version of the story relating to the establishment of reasonable belief.
 - d. The search may proceed with or without the owner or possessor's consent as long as the person conducting the search continues to have reason to believe that contraband may be found in the vehicle.

- e. If the owner or possessor forcefully resists such a search, law enforcement authorities should be notified in an attempt to obtain a search warrant.
- f. If contraband is found in the vehicle, appropriate disciplinary action may be taken and illegal items may be turned over to law enforcement authorities.

Comment: Common sense would normally dictate that a search warrant would be more appropriate for the search of vehicles belonging to strangers or persons known to be dangerous. The easy access requirement will likely preclude the inspection of automobile trunks without the consent of the owner or possessor.

VIII. Notification of parents

Any time a student's locker, desk, person, immediate possession or vehicle is searched for contraband, the parents or guardians of students living at home shall be notified in writing sent within two school business days of the search. The basis for the search, the reasons the searchers believed that contraband was present and the results of the search shall be included in the notice.

IX. Dissemination of School Policy and Rules

School policy and rules dealing with the search of student desks, lockers, persons, possessions and vehicles on school property, shall be printed in appropriate student and other publications at least annually and shall be printed in the student handbook. School staff shall be familiar with such rules and instruct students regarding their content.

Form I

Locker Number _____

Important: Read Carefully.

All desks and lockers in the school buildings are the property of the School District and remain school property even though they are temporarily assigned to students. Students are to use desks and lockers only for the storage of school books, school materials, possessions ordinarily used in day-to-day school activities and outerwear clothing. The desks and lockers will be subject to inspection at any time for cleanliness, missing school property and evidence of vandalism. All students assigned to a desk or locker are responsible for it and may be charged individually or equally for damage to lockers or desks.

In the interest of a healthy and safe school environment, lockers are further subject to inspection and search for the location and discovery of items of contraband. Items of contraband include, nonprescription controlled substances, such as marijuana, cocaine, amphetamines and barbiturates, apparatus used for the administration of controlled substances, alcoholic beverages, tobacco, weapons, explosives, poisons, and stolen property. Such items of contraband are not to be placed in school desks or lockers under any circumstances. Students who place such items in a desk or locker shall be subject to disciplinary action which may include suspension from school for the remainder of the current school year.

No locks may be placed on desks or lockers except those issued by the school administration, and any unauthorized locks may be removed or cut off.

School desks and lockers are not places of storage for items of a private or personal nature.

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(Case discusses reasonable cause, educational environment and Miranda-type warnings in the school setting)

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(Discussion of in loco parentis, and educational setting)

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